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JUN 29 2004

OFFICE OF PETITIONS

In re Application of
Johann H. Geerke
Application No.: 09/735,989
Filed: December 13, 2000
Attorney Docket No: ARC2940R1

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: ON PETITION
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This is in response to the petition under 37 CFR 1.137(b) filed April 2, 2004.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned for failure to respond in a timely manner to the non-final Office action mailed February 26, 2003. The final Office action set a shortened statutory period for reply of three-months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). No response was received within the allowed period, and the application became abandoned on May 27, 2003. A Notice of Abandonment was mailed on March 24, 2004.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy the requirements of item (1) above.

The response to the non-final Office action filed with the instant petition was a Request for Continued Examination, amendment, and Information Disclosure Statement. This is not considered a proper response at this juncture because the prosecution in the application is not closed. The only proper responses to a non-final Office action are an amendment or a continuing application. With any renewed petition filed, petitioner should withdraw the Request for Continued Examination and either designate the amendment filed as the response to the non-final Office action or file another amendment that petitioner would like considered in light of the aforementioned. If petitioner believes that prosecution in the application is, in fact, closed, petitioner should contact the examiner for the application so that the record can be clarified, as the last Office action of February 26, 2003, does not indicate that prosecution is closed.

Deposit account 10-0750 will be refunded the fee of \$770.00 for the Request for Continued Examination.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petitions
Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

By facsimile:

(703) 872-9306
Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0010.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions